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the same general size as boilers and picklers (defined in the United States Standards specified in this paragraph), and that have been inspected and certified as measuring 2 inches in diameter or less. The term “moderately cured” means the onions are mature and are more nearly well cured than fairly well cured. Other terms used in this section have the same meaning as when used in Marketing Agreement No. 130 and this part.

[47 FR 32913, July 30, 1982, as amended at 49 FR 31257, Aug. 6, 1984; 50 FR 50157, Dec. 9, 1985; 53 FR 32597, Aug. 26, 1988; 55 FR 31036, July 31, 1990; 55 FR 36601, Sept. 6, 1990; 58 FR 60369, Nov. 16, 1993; 61 FR 35593, July 8, 1996; 61 FR 39841, July 31, 1996; 63 FR 55783, Oct. 19, 1998; 69 FR 56671, Sept. 22, 2004; 71 FR 65040, Nov. 7, 2006; 76 FR 67319, Nov. 1, 2011; 76 FR 67319, Nov. 1, 2011]

EDITORIAL NOTE: After January 1, 1979, “Budget of Expenses and Rate of Assessment” regulations (e.g., sections .200 through .299) and “Handling” regulations (e.g., sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

PART 959—ONIONS GROWN IN SOUTH TEXAS

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AUTHORITY: 7 U.S.C. 601-674.

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SOURCE: 26 FR 704, Jan. 25, 1961, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

DEFINITIONS

§ 959.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may be hereafter delegated, to act in his stead.

§ 959.2 Act.

Act means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (sections 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

§ 959.3 Person.

Person means an individual, partnership, corporation, association or any other business unit.

§ 959.4 Production area.

Production area means the counties of Val Verde, Kinney, Uvalde, Medina, Wilson, Karnes, Goliad, Victoria, Calhoun, Maverick, Zavala, Frio, Atascosa, Dimmit, La Salle, McMullen, Live Oak, Bee, Refugio, Webb, Duval, Jim Wells, San Patricio, Nueces, Zapata, Jim Hogg, Brooks, Kleberg, Kenedy, Starr, De Witt, Aransas, Hi-

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dalgo, Willacy, and Cameron, in the State of Texas.

§ 959.5 Onions.

Onions means all varieties of *Allium cepa* commonly known as onions grown within the production area and marketed dry.

§ 959.6 Handler.

Handler is synonymous with *shipper* and means any person (except a common or contract carrier of onions owned by another person) who handles onions or causes onions to be handled.

§ 959.7 Handle.

Handle or *ship* means to package, load, sell, transport, or in any way to place onions in the current of the commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of field-run onions to a person in the production area who is a registered handler.

[27 FR 227, Mar. 9, 1962, as amended at 34 FR 6440, Apr. 12, 1969]

§ 959.8 Registered handler.

Registered handler means any person with adequate facilities within the production area for preparing onions for commercial market, who customarily does so, and who is so recorded by the committee, or any person who has access to such facilities within the production area, and has recorded with the committee his ability and willingness to assume customary obligations of preparing onions for commercial market.

§ 959.9 Producer.

Producer means any person engaged in a proprietary capacity in the production of onions for market.

§ 959.10 Grading.

Grading is synonymous with *preparation for market* and means the sorting or separation of onions into grades, sizes, and packs for market purposes.

§ 959.11 Grade and size.

Grade means any of the established grades of onions, and *size* means any of

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the established sizes of onions as defined and set forth in the United States Standards for Bermuda-Granex Type Onions (§§ 51.3195 to 51.3209 of this title) or any other United States Standards for onions, or amendments thereto or modifications thereof, or variations based thereon, recommended by the committee and approved by the Secretary.

§ 959.12 Pack.

Pack means a quantity of onions specified by grade, size, weight, or count, or by type or condition of container, or any combination of these recommended by the committee and approved by the Secretary.

[27 FR 2278, Mar. 9, 1962]

§ 959.13 Container.

Container means a box, bag, crate, hamper, basket, package, or any other receptacle used in the packaging, transportation, sale, shipment or other handling of onions.

§ 959.14 Varieties.

Varieties means and includes all classifications, subdivisions, or types of onions according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the committee and approved by the Secretary.

§ 959.15 Committee.

Committee means the South Texas Onion Committee, established pursuant to § 959.22.

§ 959.16 Fiscal period.

Fiscal period means the annual period beginning and ending on such dates as may be approved by the Secretary pursuant to recommendations of the committee.

§ 959.17 District.

District means each of the geographic divisions of the production area initially established pursuant to § 959.24 or as reestablished pursuant to § 959.25.

§ 959.18 Export.

Export means to ship onions to any destination which is not within the 48

contiguous States, or the District of Columbia, of the United States.

COMMITTEE

§ 959.22 Establishment and membership.

The South Texas Onion Committee, consisting of seventeen members, ten of whom shall be producers and seven of whom shall be handlers, is hereby established. For each member of the committee there shall be an alternate. Producer members and alternates shall not have a proprietary interest in or be employees of a handler organization.

§ 959.23 Term of office.

(a) The term of office of committee members and their respective alternates shall be for two years and shall begin as of August 1 and end as of July 31. The terms shall be so determined that about one-half of the total committee membership shall terminate each year.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 959.24 Districts.

To determine a basis for selecting committee members, the following districts of the production area are hereby initially established:

District No. 1: (Coastal Bend) The Counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, and McMullen in the State of Texas.

District No. 2: (Laredo) The Counties of Zapata, Webb, and Jim Hogg in the State of Texas.

District No. 3: (Lower Valley) The Counties of Cameron, Hidalgo, Starr, and Willacy in the State of Texas.

District No. 4: (Wilson-Karnes) The Counties of DeWitt, Wilson, Atascosa, and Karnes in the State of Texas.

District No. 5: (Winter Garden) The Counties of Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and La Salle in the State of Texas.

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§ 959.25 Redistricting.

The committee may recommend, and pursuant thereto, the Secretary may approve, the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the committee shall give consideration to:

(a) Shifts in onion acreage within the districts and within the production area during recent years;

(b) The importance of new production in its relation to existing districts;

(c) The equitable relationship of committee membership and districts;

(d) Economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(e) Other relevant factors. No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than six months prior to such date.

§ 959.26 Selection.

The Secretary shall select members and respective alternates from districts established pursuant to § 959.24 or § 959.25. Initial selections shall be as follows:

District No. 1: 3 producer members and alternates; 1 handler member and alternate.

District No. 2: 2 producer members and alternates; 1 handler member and alternate.

District No. 3: 3 producer members and alternates; 2 handler member and alternates.

District No. 4: 1 handler member and alternate.

District No. 5: 2 producer members and alternates; 2 handler members and alternates.

§ 959.27 Nomination.

The Secretary may select the members of the committee and alternates from nominations which may be made in the following manner:

(a) A meeting or meetings of producers and handlers shall be held for each district to nominate members and alternates for the committee. For nominations to the initial committee, the meetings may be sponsored by the United States Department of Agri-

culture or by any agency or group requested to do so by such department. For nominations for succeeding members and alternates on the committee, the committee shall hold such meetings or cause them to be held prior to June 15 of each year, after the effective date of this subpart, or by such other date as may be specified by the Secretary;

(b) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate member on the committee;

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as he may prescribe, not later than July 1 of each year, or by such other date as may be specified by the Secretary;

(d) Only producers may participate in designating producer nominees, and only handlers may participate in naming handler nominees. In the event a person is engaged in producing or handling onions in more than one district, such person shall elect the district within which he may participate as aforesaid in designating nominees;

(e) Regardless of the number of districts in which a person produces or handles onions, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled in the respective district in which he elects to vote.

[26 FR 12751, Dec. 30, 1961, as amended at 34 FR 6440, Apr. 12, 1969]

§ 959.28 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 959.27, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in §§ 959.22 through 959.26.

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§ 959.29 Acceptance.

Any person selected as a committee member or alternate shall qualify by filing a written acceptance within ten days after being notified of such selection.

§ 959.30 Vacancies.

To fill committee vacancies, the Secretary may select such members or alternates from unselected nominees on the current nominee list from the district involved, or from nominations made in the manner specified in § 959.27. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of the representation provided for in §§ 959.24 to 959.26.

§ 959.31 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence or when designated to do so by the member for whom he is an alternate. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or his alternate or the committee (in that order) may designate another alternate from the same district and the same group (handler or grower) to serve in such member's place and stead. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

[27 FR 2278, Mar. 9, 1962]

§ 959.32 Procedure.

(a) Eleven members of the committee shall be necessary to constitute a quorum. Nine concurring votes, or two-thirds of the votes cast, whichever is greater, shall be required to pass any motion or approve any committee action. At assembled meetings all votes shall be cast in person.

(b) The committee may meet by telephone, telegraph, or other means of communication and any vote at such a meeting shall be promptly confirmed in writing. On such occasions unanimous vote of committee members voting will be required to approve any action.

§ 959.33 Expenses and compensation.

Committee members and alternates when acting on committee business shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this part. In addition they may receive compensation at a rate to be determined by the committee and approved by the Secretary, not to exceed \$10 for each day, or portion thereof, spent in attending to committee business.

§ 959.34 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 959.35 Duties.

It shall be, among other things, the duty of the committee:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members and alternates, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the

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salaries and define the duties of each such person, and to protect the handling of committee funds through fidelity bonds for employees;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to onions;

(f) To prepare a marketing policy;

(g) To recommend marketing regulations to the Secretary;

(h) To recommend rules and procedures for, and to make determinations in connection with, issuance of certificates of privilege;

(i) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee, and such minutes, books and records shall be subject to examination at any time by the Secretary or by his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(j) At the beginning of each fiscal period, to prepare a budget of its expenses for such fiscal period, together with a report thereon;

(k) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. A copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers, and a copy of each such report shall be furnished the Secretary;

(l) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

EXPENSES AND ASSESSMENTS

§ 959.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursu-

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ant to this subpart, determines to be appropriate. Handlers shall share expenses on the basis of a fiscal period. Each handler's share of such expenses shall be proportionate to the ratio between the total quantity of onions handled by him as the first handler thereof during a fiscal period and the quantity of onions handled by all handlers as first handlers thereof during such fiscal period.

§ 959.41 Budget.

As soon as practicable after the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 959.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles onions, which are regulated under this part, shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all onions which were regulated under this part and which were handled by the first

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handlers thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(e) If a handler does not pay assessments within the time prescribed by the committee, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the committee with approval of the Secretary.

[26 FR 704, Jan. 25, 1961, as amended at 73 FR 10976, Feb. 29, 2008]

§ 959.43 Accounting.

(a) Assessments collected in excess of expenses incurred shall be accounted for in accordance with one of the following:

(1) Excess funds not retained in a reserve, as provided in paragraph (a)(2) of this section shall be refunded proportionately to the persons from whom they were collected.

(2) The committee, with the approval of the Secretary, may carry over excess funds into subsequent fiscal periods as reserves: *Provided*, That funds already in reserves do not equal approximately two fiscal periods' expenses. Such reserve funds may be used (i) to defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the

purpose specified in this part and shall be accounted for in the manner provided for in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

[26 FR 12751, Dec. 30, 1961, as amended at 34 FR 6440, Apr. 12, 1969]

RESEARCH AND DEVELOPMENT

§ 959.48 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and development projects designed to assist, improve, or promote the marketing, distribution, consumption or efficient production of onions. The expenses of such projects shall be paid from funds collected pursuant to § 959.42.

[38 FR 31516, Nov. 15, 1973]

REGULATIONS

§ 959.50 Marketing policy.

(a) At the beginning of each season, and as the Secretary may require, the committee shall prepare a marketing policy. Such policy shall indicate the data on onion supplies and demand on which the committee bases its judgments and recommendations. It shall

indicate also the kind or types of regulations contemplated during the ensuing season, and, to the extent practical, shall include recommendations for specific regulations. Notice of such marketing policy shall be given to producers, handlers, and other interested parties by bulletins, newspapers, or other appropriate media, and copies thereof shall be submitted to the Secretary and shall be available generally.

(b) Marketing policy statements relating to recommendations for regulations shall give appropriate consideration to onion supplies for the season, with special consideration to:

- (1) Estimates of total supplies, including grade, size, and quality thereof, in the production area;
- (2) Estimates of supplies in the competing areas;
- (3) Market prices by grades, sizes, containers, and packs;
- (4) Estimates of supplies of competing commodities;
- (5) Anticipated marketing problems;
- (6) Level and trend of consumer income; and
- (7) Other relevant factors.

§ 959.51 Recommendations for regulations.

Upon complying with the requirements of § 959.50 the committee may recommend regulations to the Secretary whenever it finds that such regulations as are provided for in this subpart will tend to effectuate the declared policy of the act.

§ 959.52 Issuance of regulations.

(a) The Secretary shall limit the handling of onions by regulations specified in this section whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulations would tend to effectuate the declared policy of the act.

(b) Such regulations may:

- (1) Limit in any or all portions of the production area the handling of particular grades, sizes, qualities or packs, or any combination thereof, of any or all varieties of onions during any period;
- (2) Limit the handling of particular grades, sizes, qualities, or packs of onions differently for different varieties,

for different containers, for different portions of the production area, or any combination of the foregoing, during any period;

(3) Limit the handling of onions by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity;

(4) Fix the size, capacity, weight, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, preparation for market, shipment, or other handling of onions;

(5) Establish holidays by prohibiting throughout the entire production area, the packaging or loading, or both, of onions on Sundays;

(6) Prohibit the packaging or loading, or both, of onions except during specified consecutive hours of any calendar day or days: *Provided*, That, any handler may, upon such notice to the committee as it may prescribe with approval of the Secretary, package or load onions during a different period in such day consisting of the same number of consecutive hours: *Provided further*, That any handler who, due to conditions specified in regulations established by the committee with the approval of the Secretary as being beyond a handler's reasonable control, is prevented for more than one of such consecutive hours from so packaging or loading onions may, in accordance with such regulations, obtain permission from the committee to package or load onions, or both, during a comparable number of additional hours in the same day or a later day as specified by the committee.

(c) Regulations issued hereunder may be amended, modified, suspended, or terminated whenever it is determined:

- (1) That such action is warranted upon recommendation of the committee or other available information;
 - (2) That such action is essential to provide relief from inspection, assessment, or regulations under paragraph (b) of this section for minimum quantities less than customary commercial transactions; or
 - (3) That regulations issued hereunder no longer tend to effectuate the declared policy of the act.
- (d) No handler may handle onions that were packaged or loaded or both

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during any period when such packaging or loading or both was prohibited by any regulation issued pursuant to paragraphs (b)(5) or (6) of this section, except such onions as were exempted thereunder.

[26 FR 704, Jan. 25, 1961. Redesignated at 26 FR 12751, Dec. 30, 1961, as amended at 34 FR 6440, Apr. 12, 1969]

§ 959.53 Handling for special purposes.

Regulations in effect pursuant to § 959.42, § 959.52, or § 959.60 may be modified, suspended, or terminated to facilitate handling of onions for:

- (a) Relief or charity;
- (b) Experimental purposes;
- (c) Export; and
- (d) Other purposes which may be recommended by the committee and approved by the Secretary.

§ 959.54 Safeguards.

The committee, with the approval of the Secretary, may establish through rules such requirements as may be necessary to establish that shipments made pursuant to § 959.53 were handled and used for the purpose stated.

§ 959.55 Notification of regulation.

The Secretary shall promptly notify the committee of regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

INSPECTION

§ 959.60 Inspection and certification.

(a) Whenever the handling of onions is regulated pursuant to § 959.52, or at other times when recommended by the committee and approved by the Secretary, no handlers shall handle onions unless they are inspected by an authorized representative of the Federal or Federal-State Inspection Service and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to § 959.52(c) or § 959.54, or paragraph (b) of this section.

(b) Regarding, resorting, or repacking any lot of onions shall invalidate any prior inspection certificate insofar as the requirements of this section are concerned. No handler shall handle on-

ions after they have been regraded, resorted, or repacked unless such onions are inspected by an authorized representative of the Federal or Federal-State Inspection Service. Such inspection requirements on regraded, resorted, or repacked onions may be modified, suspended, or terminated upon recommendation by the committee and approval of the Secretary.

(c) Upon recommendation of the committee and approval by the Secretary, any or all onions so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the containers by the handler under the direction and supervision of a Federal or Federal-State Inspector or the Committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) At any time this marketing order is inoperative, compulsory inspection is not required.

(e) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(f) When onions are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the Inspection Service.

(g) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of onions by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, or other document authorized by the committee to indicate that such inspection has been performed. Such certificate or document shall be surrendered to such authority as may be designated.

REPORTS

§ 959.80 Reports.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner or form and at

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such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The quantities of onions received by a handler;

(2) The quantities disposed of by him segregated as to the respective quantities subject to regulation and not subject to regulation;

(3) The date of each such disposition and the identification of the carrier transporting such onions; and

(4) Identification of the inspection certificates relating to the onions which were handled pursuant to § 959.52 or § 959.53, or both.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handlers' identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records and documents on onions received and onions disposed of by him as may be necessary to verify reports he submits to the committee pursuant to this section.

COMPLIANCE

§ 959.81 Compliance.

Except as provided in this subpart, no handler shall handle onions, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, or the rules and regulations thereunder, and no handler shall handle onions except in conformity to the provisions of this subpart.

MISCELLANEOUS PROVISIONS

§ 959.82 Right of the Secretary.

The members of the committee (including successors and alternates), and

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any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 959.83 Effective time.

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 959.84 Termination.

(a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of onions for market: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such onions produced for market.

(d) The Secretary shall conduct a referendum within six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether continuance is favored by producers. The Secretary would consider termination of this part if less than two-thirds of the growers voting in the referendum and growers of less than

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two-thirds of the volume of onions represented in the referendum favor continuance.

(e) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

[26 FR 704, Jan. 25, 1961, as amended at 73 FR 10976, Feb. 29, 2008]

§ 959.85 Proceeding after termination.

(a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall continue as joint trustees for the purpose of settling the affairs of the committee by liquidating all of the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 959.86 Effect of termination or amendments.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may

thereafter arise in connection with any provisions of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 959.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 959.88 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 959.89 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 959.90 Personal liability.

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 959.91 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person,

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circumstance, or thing, shall not be affected thereby.

§ 959.92 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Subpart—Rules and Regulations

SOURCE: 26 FR 2560, Mar. 25, 1961, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

GENERAL

§ 959.100 Order.

Order means Order No. 959 (§§ 959.1 to 959.92; 26 FR 704) regulating the handling of onions grown in South Texas.

§ 959.101 Terms.

The terms used in this subpart shall have the same meaning as when used in the order.

§ 959.102 Communications.

Unless otherwise provided in the order, or by specific direction of the committee, all reports, applications, submittals, requests and communications in connection with the order shall be addressed to the South Texas Onion Committee, at its principal office.

§ 959.103 Registered handler.

For purposes of this part any person who operates an established packing house within the production area with commonly accepted adequate facilities for grading and packing onions for market, and who customarily buys onions from producers for grading, packing, and marketing shall be recorded by the committee as a registered handler. Any other person who wishes to be listed as a registered handler may make application for registration on forms furnished by the committee. If such applicant has facilities available to him that are determined by the committee to be adequate for grading and packing onions for market, and he assumes responsibility for inspection of onions handled by him, and for assessments thereon, he may be approved and recorded as a registered handler. If the committee determines from the avail-

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able information that the applicant is not entitled to be registered with the committee, he shall be so informed by written notice stating the reason for denial of his application. Any registration of a handler pursuant to this section may be canceled by the committee under circumstances which would have justified denial of his application. Any handler whose registration has been canceled shall be so informed by written notice thereof stating the reason therefor. The committee shall also notify producers of each such cancellation of handler registration through committee bulletins or published notice in local newspapers of general distribution, or both.

§ 959.104 Fiscal period.

The fiscal period shall begin August 1 of each year and end July 31 of the following year, both dates inclusive.

[68 FR 11466, Mar. 11, 2003]

§ 959.110 Reestablishment of districts.

Pursuant to § 959.25, the following districts are reestablished:

(a) *District 1* (Coastal Bend-Lower Valley): The counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, McMullen, Cameron, Hidalgo, Starr, and Willacy.

(b) *District 2* (Laredo-Winter Garden): The counties of Zapata, Webb, Jim Hogg, De Witt, Wilson, Atascosa, Karnes, Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and LaSalle.

[55 FR 25961, June 26, 1990]

§ 959.111 Reapportionment of committee membership.

Pursuant to § 959.25, committee membership is reapportioned among districts as follows:

(a) *District 1* (Coastal Bend-Lower Valley): Six producer members and four handler members.

(b) *District 2* (Laredo-Winter Garden): Four producer members and three handler members.

[55 FR 25962, June 26, 1990]

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§ 959.115 Planting reports.

Each handler shall furnish every two weeks during the planting season to the committee, on a form provided by the committee, the number of acres of onions planted by the handler or growers for whom the handler packs onions during such period and the location of such plantings.

[53 FR 7330, Mar. 8, 1988]

SAFEGUARDS

§ 959.120 Policy.

Whenever shipments of onions for special purposes pursuant to § 959.53 are relieved in whole or in part from regulations issued under § 959.52, the committee may require information and evidence on the manner, methods, and timing of such shipments as safeguards against the entry of any such onions in trade channels other than those for which intended. Such information and evidence shall include requirements set forth below with respect to Certificates of Privilege.

§ 959.121 Qualification.

Before handling onions for special purposes which do not meet regulations issued pursuant to § 959.52, a handler, when required by such regulations, must qualify with the committee to handle shipments for special purposes. To qualify he must (a) apply for and receive a Certificate of Privilege indicating his intent to so handle onions, (b) agree to comply with reporting and other requirements set forth in §§ 959.120 to 959.125, inclusive, with respect to such shipments, and (c) receive approval of the committee, or its duly authorized agents, to so handle onions. Such approval will be based upon evidence furnished in his application for Certificate of Privilege and other information available to the committee.

§ 959.122 Application.

(a) Applications for a Certificate of Privilege shall be made on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; the quantity by grade, size, and quality of the onions to be shipped; the mode of transportation; the con-

signee; the destination; the purpose for which the onions are to be used; and certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon, and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents for the purposes stated in § 959.120.

(b) The committee may require each handler making shipments of onions for export to include with his application a copy of the Department of Commerce Shippers Export Declaration Form No. 7525-V applicable to such shipment.

§ 959.123 Approval.

The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application, based upon the determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a Certificate of Privilege to the applicant. Each certificate shall cover a specified period and specified qualities and quantities of onions to be sold or transported to a designated consignee for the purpose declared.

§ 959.124 Reports.

Each handler of onions shipping under Certificates of Privilege shall supply the committee with reports as requested by the committee, or its duly authorized agents, showing the name and address of the shipper; the car or truck identification; the loading point; destination; consignee; the inspection certificate number when inspection is required; and any other information deemed necessary by the committee.

§ 959.125 Disqualification.

The committee from time to time may conduct surveys of handling of onions for special purposes requiring Certificates of Privilege to determine whether handlers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that the handler or consignee is failing to comply with

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requirements and regulations applicable to handling of onions in special outlets and requiring such certificates, a Certificate or Certificates of Privilege issued such handler may be rescinded and subsequent certificates denied. Such disqualification shall apply to, and not exceed, a reasonable period of time as determined by the committee, but in no event shall it extend beyond the date of the succeeding fiscal period. Any handler who has a Certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

§ 959.126 Handling of culls.

(a) The handling of culls, i.e., onions which fail to meet the grade, size and quality requirements established under § 959.52(b) of this part, is prohibited, unless such onions are:

(1) Mechanically mutilated at the packing shed rendering them unsuitable for fresh market;

(2) Handled for special purpose outlets approved under § 959.53 of this part; or

(3) Handled for canning or freezing.

(b) As a safeguard against culls entering fresh market channels each handler of culls under paragraphs (a) (2) or (3) of this section shall apply for and obtain a certificate from the committee which shall require the handler to furnish such reports or other information as the committee may request.

[28 FR 60, Jan. 3, 1963]

Subpart—Assessment Rates

§ 959.237 Assessment rate.

On and after August 1, 2009, an assessment rate of \$0.025 per 50-pound equivalent is established for South Texas onions.

[74 FR 38508, Aug. 4, 2009]

Subpart—Handling Regulations

§ 959.322 Handling regulation.

During the period beginning March 1 and ending June 4, no handler shall handle any onions, including onions for peeling, chopping, and slicing, unless they comply with paragraphs (a) through (c) or (d) or (e) of this section; except that onions handled during the

period June 5 through July 15 shall comply with paragraphs (c) or (d) or (e) of this section.

(a) *Grade requirements.* Not to exceed 20 percent defects of U.S. No. 1 grade. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance shall be permitted in individual packages in percentage grade lots. Application of tolerances in U.S. onion standards shall apply to in-grade lots.

(b) *Size requirements.* (1) “Small”—1 to 2¼ inches in diameter, and limited to whites only;

(2) “Repacker”—1¾ to 3 inches in diameter, with 60 percent or more 2 inches in diameter or larger;

(3) “Medium”—2 to 3½ inches in diameter; or

(4) “Jumbo” or “Large”—3 inches or larger in diameter; or

(5) “Colossal”—3¾ inches or larger in diameter.

(6) Tolerances for size in the U.S. onion standards shall apply except that for “repacker” and “medium” sizes not more than 20 percent, by weight, of onions in any lot may be larger than the maximum diameter specified. Application of tolerances in the U.S. onion standards shall apply.

(c) *Inspection.* (1) No handler may handle any onions regulated hereunder, except pursuant to paragraphs (d), (e)(1), or (e)(2) of this section unless an inspection certificate has been issued by the Federal or Federal-State Inspection Service, Texas Cooperative Inspection Program, covering them and the certificate is valid at the time of shipment. City destinations shall be listed on inspection certificates and release forms.

(2) No handler may transport by motor vehicle or cause such transportation of any shipment of onions for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto or the shipment release form furnished by the inspection service identifying truck lots to which a valid inspection certificate is applicable. A copy of such inspection certificate or shipment release form shall be surrendered upon

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request to Texas Department of Agriculture personnel designated by the committee.

(3) For purposes of operation under this part, each inspection certificate, shipment release form, or committee form required as evidence of inspection is hereby determined to be valid for a period not to exceed 72 hours following completion of inspection as shown on the certificate.

(4) Handlers shall pay assessment on all assessable onions according to the provisions of § 959.42.

(d) *Minimum quantity exemption.* Any handler may handle, other than for resale, up to, but not to exceed 110 pounds of onions per day without regard to the requirements of this section, but this exemption shall not apply to any shipment or any portion thereof of over 110 pounds of onions.

(e) *Special purpose shipments.* (1) The minimum grade, size, quality, and inspection requirements set forth in paragraphs (a) through (c) of this section shall not be applicable to shipments of onions for charity, relief, export, and processing if handled in accordance with paragraph (f) of this section.

(2) *Experimental shipments.* Upon approval by the committee, onions may be shipped for experimental purposes exempt from regulations issued pursuant to §§ 959.42, 959.52 and 959.60, provided they are handled in accordance with the safeguard provisions of paragraph (f) of this section.

(3) *Onions failing to meet requirements.* Onions failing to meet the grade and size requirements of this section, and not exempt under paragraphs (d) or (e) of this section, may be handled only pursuant to § 959.126. Such onions not handled in accordance with paragraph (f) of this section shall be mechanically mutilated at the packing shed rendering them unsuitable for fresh market.

(f) *Safeguards.* Each handler making shipments of onions for charity, relief, export, processing, or experimental purposes shall:

(1) Apply to the committee for and obtain a Certificate of Privilege to make such shipments;

(2) Furnish reports of each shipment made under the applicable Certificate of Privilege;

(3) Such reports, in accordance with § 959.80, shall be furnished to the committee in such manner, on such forms and at such times as it may prescribe. Each handler shall maintain records of such shipments pursuant to § 959.80(c), and the records shall be subject to review and audit by the committee to verify reports thereon.

(4) In addition to provisions in the preceding paragraphs, each handler making shipments for processing shall:

(i) Weigh or cause to be weighed each shipment prior to, or upon arrival at, the processor.

(ii) Attach a copy of the weight ticket to a completed copy of the Report of Special Purpose Onion Shipment and return both promptly to the committee office.

(iii) Make each shipment directly to the processor or the processor's subcontractor and attach a copy of the Report of Special Purpose Onion Shipment.

(iv) Each processor or processor's subcontractor who receives cull onions shall weigh the onions upon receipt, complete the Report of Special Purpose Shipment which accompanies each load and mail it immediately to the committee office.

(v) Each processor who receives cull onions shall make available at its business office at any reasonable time during business hours, copies of all applicable purchase orders, sales contracts, or disposition documents for examination by the Department or by the committee, together with any other information which the committee or the Department may deem necessary to enable it to determine the disposition of the onions.

(vi) If a processor employs a subcontractor for any stage of processing, such processor shall be responsible for ensuring that the subcontractor accounts for all quantities of onions received and processed or otherwise disposed of, and that the subcontractor reports to the committee in the same manner and frequently as the processor.

(5) Cull onions transported in bags shall be transported in unlabelled bags,

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or shall have labelled bags reversed so that the label is not visible.

(g) *Definitions.* *U.S. onion standards* means the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 51.3195–51.3209), or the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) (7 CFR 51.2830–51.2854), whichever is applicable to the particular variety, or variations thereof specified in this section. The term *U.S. No. 1* shall have the same meaning as set forth in these standards. *Processing* means cooking or freezing the onions in such a way, or with such other food components, that the consistency of the product is changed. Canning and freezing shall be considered forms of processing. All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 143, as amended, and this part.

[47 FR 8552, Mar. 1, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 959.322, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

EDITORIAL NOTE: After January 1, 1979 “Budget of Expenses and Rate of Assessment” regulations (e.g., sections .200 through .299) and “Handling” regulations (e.g., sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

**PART 966—TOMATOES GROWN IN
FLORIDA**

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